



Winston Hickox
Secretary for
Environmental
Protection



Gray Davis
Governor

MINUTES OF
REGULAR MEETING
Friday, May 15-16, 2003
REGIONAL WATER QUALITY CONTROL BOARD

Thursday, May 15, 2003, 1:00 p.m.

Chairman Bruce Daniels called the meeting of the Central Coast Regional Water Quality Control Board to order at 1:00 p.m. on May 15, 2003, in the Watsonville City Council Chambers, 250 Main Street, Watsonville, California.

1. Roll Call..... Executive Assistant Carol Hewitt

Board Members Present:

Chairman Bruce Daniels
Vice Chair Jeffrey Young
Leslie Bowker
Russell Jeffries
Daniel Press

Absent: Marco Rizzo

Gary Shallcross (recused)
Donald Villeneuve
John Hayashi

2. Introductions..... Executive Officer Roger Briggs

Executive Officer Briggs introduced staff and asked all interested parties who wished to comment to fill out testimony cards and submit them. He turned the

meeting over to Chair Daniels. The Chair listed the order of the Duke Energy Moss Landing Power Plant hearing.

3. Public Forum Board Direction

Mr. David Dilworth, Helping Our Peninsula's Environment, submitted correspondence and provided comments to the Regional Board about listing the

Carmel River as impaired by pathogens, pesticides, and fecal coliform.

4. Duke Energy Moss Landing Power Plant, Monterey County Order No. 00-41
[Michael Thomas 805/542-4623]

A transcript of the entire hearing is available at the Regional Board office. The Hearing was conducted according to Public Notice previously published and distributed on this item. Each party was allowed a total of 50 minutes for direct testimony, cross-examination and rebuttal arguments. A separate 3 minutes were allocated for closing statements. Each party was allowed to cross-examine each parties' respective witnesses. In this hearing four parties participated including Regional Board and California Energy Commission staff, Duke Energy and Voices of the Wetlands. Members of the public were provided time to present their oral comments.

Regional Board Chair Bruce Daniels read an introductory opening statement and swore in all speakers and participants in the hearing. Water Resource Control Engineer Michael Thomas presented Regional Board staff direct and rebuttal testimony. Mr. Thomas presented evidence that the costs of closed cooling systems are wholly disproportionate to the benefit to be gained, from an economic perspective, based on several sources from the literature. Mr. Thomas and the Regional Board's independent scientists also presented evidence that the ecological benefit of closed cooling is wholly disproportionate to the costs of closed cooling. Staff summarized its

testimony, which is based on substantial evidence in the record.

Jennifer Soloway, State Board staff counsel, presented legal testimony and arguments. Ms. Soloway presented the legal context for the hearing with respect to Section 316b of the Clean Water Act and U.S. EPA precedent.

For the California Energy Commission: William Chamberlain, CEC Chief Counsel, Gary Fay, CEC Hearing Officer, and Mary Jo Thomas of the California Independent System Operator.

For Duke Energy: Christopher Ellison, Attorney for Duke Energy, Andy Trump, David Meyer, and John Ruud.

For Voice of the Wetlands (VOW): Deborah Silvas, Counsel with Earthjustice Legal Defense Fund. Dr. Brent Haddad, witness for the VOW.

The following members of the public spoke at the Hearing:
Howard Classen
Dick Slayton

Carolyn Nielson
Madeline Clark, Elkhorn Slough Coalition
Lois Robin
Susan Goldbeck
Patricia Matejzek
Henriette Groot, CAPE

Professor Greg Cailliet, Moss Landing Marine Labs: Independent scientist to the Regional Board. Answered questions from Board members and various parties.

Professor Pete Raimondi, UC Santa Cruz: Independent scientist to the Regional Board. Answered questions from Board members and various parties.

Regional Board staff, Duke Energy and VOW each provided concluding statements.

Board members asked a number of questions of Regional Board staff, the public, and the various designated parties. A full deliberation followed.

A full description of the Hearing is contained in the Court Reporter's transcript.

MOTION: Jeffrey Young moved to adopt a Resolution reaffirming Finding #48. After undertaking a thorough and comprehensive analysis, the Board concluded that Finding #48 is supported by the weight of the evidence. Statements of Board members Bowker, Daniels, Jeffries, and Young support the decision. **SECONDED** by Leslie Bowker. **CARRIED – (4-1)** (*D. Press voted no*).

Friday, May 16, 2003, 8:30 a.m.

5. Roll Call.....Executive Assistant Carol Hewitt

Board Members Present:

Chairman Bruce Daniels
Vice Chair Jeffrey Young
Leslie Bowker
Russell Jeffries
Daniel Press [*arrived at 9:05 a.m.*]
Gary Shallcross

Absent: John Hayashi
Marco Rizzo
Donald Villeneuve

6. Introductions.....Executive Officer Briggs

Executive Officer Roger Briggs introduced staff and asked all interested parties who wished to comment to fill out testimony cards and submit them. Mr. Briggs announced that Mr. Gary Carlton, State Board Liaison, is unable to attend the meeting today. Mr. Briggs listed Supplemental Sheets and Question and Answer items

as follows: Item Nos. 12 (Betabel Valley RV Park and Fallow Deer Ranch with Slaughterhouse). Item #13/Discussion of Lower Salinas Watershed Program (supplemental sheet letters), Item #19/Betabel Valley RV Park, Item #24/McAbee Trucking, Item #25/El Capitan Campground, Item #26/Local Sewage

Collection Agencies Tributary to the City of Watsonville WWTP, Item #28/Timber Harvest Plans (Supplemental Sheet), Item #31/Highlands Sanitary Association (supplemental sheet and a letter), Item #32/Duke Energy Moss Landing LLC (two Letters of

support), Item #34/Morro Bay TMDL and Implementation Plan for Sediment (two supplemental sheets), and Item Nos. 35, 36, and 37 (supplemental sheets).

7. Resolution for Senior Water Resource Control Engineer, Jay Cano.....Resolution No. 2003-0083

Chair Daniels read Resolution No. 2003-0083 expressing appreciation for exemplary service to Jay Cano, Senior Water Resource Control Engineer. Mr.

Cano thanked the Board and staff for the privilege of working with them.

8. Approval of Minutes for March 21, 2003 MeetingBoard Motion

MOTION: Russell Jeffries moved to approve the March 21, 2003 minutes with the following correction: Item #12 – “Russell Jeffries recused from the item on the advice of staff counsel.” **SECONDED by Jeffrey Young. CARRIED – Unanimously (5-0)**

9. Public ForumChair Daniels

- Mr. Jerry Vincent/U. S. Army Corps of Engineers expressed acknowledgement and thanked the Regional Board staff and specifically thanked Grant Himebaugh who has been supportive and

worked on the Former Used Defense sites in Monterey.

11. Uncontested Items.....Board Motion

Executive Officer Briggs recommended the following: Item #32/Duke Energy Moss Landing Consideration of Stipulated Order (recommend to stay on consent calendar), Item #34/Morro Bay TMDL and Implementation Plan (recommend removal from consent calendar), Item #24/McAbee Trucking (to include language changes recommended for best management practices enforcement), Item #26/Local Sewage Collection Agencies Tributary to the City of

Watsonville WWTP (recommend adding Monterey County Environmental Health Dept. as one of the agencies that performs beach monitoring to Finding #11 of the Order). Supplemental Sheets were completed for TMDL Item Nos. 35, 36, and 37 with recommended changes. Item #23/Sandman Sand and Gravel Quarry (recommended removal from the consent calendar)

MOTION: Jeffrey Young moved to approve consent calendar Item Nos. 24, 26, 32, 35, 36, and 37. Item Nos. 23 and 34 were removed from the calendar. SECONDED by Gary Shallcross. CARRIED – Unanimously (5-0)

(Board member Press arrived at the meeting at 9:05 a.m.)

12. Low Threat and General Discharge Cases.....Information/Discussion/Board Approval

Executive Officer Briggs reviewed low threat and general discharge cases listed in the agenda notice. Mr. Briggs also indicated that staff was recommending waiver of waste discharge requirements for Mr. Konieczny's fallow deer ranch and slaughterhouse due to its small size, low threat to water quality, and regulation by Monterey County. Mr. Briggs mentioned that some public concern had been raised about the

facility and introduced Eric Gobler, staff engineer, to address the concerns. Mr. Gobler identified two recent letters received, a May 6, 2003 letter, from Elizabeth Howard asking for more investigation regarding wastewater disposal and a May 6, 2003 letter, from Susan Goldbeck (Ms. Howard's attorney) addressing California Environmental Quality Act (CEQA) concerns. Mr. Gobler noted that the two letters were

mailed to the Regional Board members on May 9, 2003.

Mr. Gobler summarized the primary concerns identified in the May 6, 2003 letters and Regional Board staff's responses, as follows: 1) CEQA Compliance – A Mitigated Negative Declaration was approved by Monterey County Planning Commission in July 2002. Its approval has been appealed and a Superior Court decision is pending, expected within 30 days. Unless the Court decides to the contrary, the Negative Declaration will stand as approved by the County and is adequate with respect to water quality issues; 2) Several Building and Operational Violations – The proposed project is intended, in part, to improve and correct violations; 3) Chronic Wasting Disease – Department of Fish and Game and US Geological Survey data indicate that California is a "low risk" state for the disease, and that Fallow Deer, humans and cattle are not known to be susceptible to the disease at this point; 4) Septic System Adequacy for Slaughterhouse Wastewater – The system design conforms to Basin Plan requirements, has been approved by Monterey County Environmental Health and should be as effective for slaughterhouse wastewater as for domestic wastewater disposal. The slaughter operation has been designed to keep blood and animal wastes out of the septic system; 5) "Bowl-shaped" Valley with No Runoff Outlet – The owner hired a technical consultant that determined the area to be a "hanging valley" that allows runoff to drain adequately; 6) Animal Feeding Operation (AFO) or Confined Animal Feeding Operation (CAFO) – USEPA defines AFO applicability if animal are confined more than 45 day per year and if forage crops are not sustained in the normal growing season. Since

the deer ranch covers 460 acres, the animals are not confined and their food is not supplemented with irrigated pastureland, the facility does not meet the definition of an AFO or CAFO.

Elizabeth Howard spoke on each of the above-mentioned concerns and asked the Regional Board to investigate each concern further before making a final decision. She indicated that USEPA reports oppose using septic systems for disposal of slaughterhouse wastewater and asked the Regional Board to not waive waste discharge requirements. The Regional Board asked several questions about the site, existing and proposed operating conditions, Chronic Wasting Disease and Babesiosis, animal slaughtering practices now and planned, and about the CEQA process status. Sheri Damon, attorney representing the owner (Gerd Konieczny) presented a letter, dated May 15, 2003, addressing CEQA status and providing data that chronic wasting disease is not present in Mr. Konieczny's herd. Ms. Damon addressed several questions about existing and proposed operation conditions. Elizabeth Howard answered questions related to disease concerns, slaughtering practices and wastewater disposal issues. Laura Lawrence, Monterey County Health, answered questions about the County CEQA process and septic system approval. Mr. Gobler concluded that Regional Board staff had reviewed the project information and believes the operation proposed poses minimal threat to water quality. The Regional Board directed staff to prepare a complete report addressing the issues discussed at today's meeting and asked that it be brought back to the Board for a final decision.

(Chair Daniels announced a break at 9:50 am. The meeting reconvened at 10:05 am)

13. Discussion of Lower Salinas Watershed Program and Linkage with Use of Moss Landing Power Plant Settlement Funds; Consistent with the Bay Protection Plan and Monterey Bay National Marine Sanctuary Plan for Agriculture [Alison Jones 805/542-4646] Discussion

Board member Jeffries recused. This item was placed on the agenda as a discussion item in order to allow additional public input regarding the use of settlement funds being provided by Pacific Gas and Electric Company (PG&E) under a consent judgment. The Court judgment settles alleged violations of PG&E's Moss Landing power plant permit and provides for establishment of three supplemental environmental projects, a Nonpoint Source Projects Implementation

Fund for implementation and support of projects consistent with the Toxic Hot Spots Cleanup Plan and/or the Monterey Bay National Marine Sanctuary's Plan for Agriculture, a Nonpoint Source Monitoring Fund, and the Central Coast Ambient Monitoring Program Fund. The Board had previously concurred with the consent judgment at the December 13, 2002 meeting.

Regional Board Executive Officer, Roger Briggs, provided a brief introduction explaining the Regional Board's watershed approach to water quality protection and its assessment that agricultural runoff and percolation are the most significant sources of water quality problems in the lower Salinas and Elkhorn Slough watersheds. The settlement funds offer a rare opportunity to accomplish wide-scale improvements by helping to fund many small pilot projects on agricultural lands and monitor their effectiveness.

Twenty-one testimony cards were submitted; twenty members of the public made oral comments and one submitted written comments on the card. In addition, two letters were submitted during the hearing.

Several speakers requested that the funds be used for specific projects other than agricultural nonpoint source control projects. Mr. Jim Oakden of ABA Consultants urged completion of the ecological risk assessment for disposal of fine sediments that end up in Moss Landing Harbor and stated that source control would not solve the problem. Dr. John Oliver of Moss Landing Marine Labs stated that restoration of natural water systems is the solution to water quality problems and requested more resources for on-going restoration efforts. Dr. Stacy Kim, benthic ecologist at Moss Landing Marine Labs, stated that the ecological risk assessment is critical and needs to be completed. Patricia Hutchinson, representing Monterey County Supervisor Louis Calcagno, requested more contact with the community in deciding the use of settlement funds in the future. She stated the restoration of Moro Cojo has the best nexus with the funds and that it is not possible to prevent erosion of farmlands on highly erodible soils. Linda Horning, the general manager of Moss Landing Harbor District, concurred with other speakers on the need to fund other projects and requested that \$500,000 be used to monitor sediment in the harbor. Dr. Margaret Shirrel of Moss Landing Harbor District spoke about the need for a scientific contact person when decisions are made and stated that the ecological risk assessment and the Northern Salinas Valley Watershed Restoration Plan should be implemented.

Several farmers spoke about the need for cost-share funding. Ron Yokota, farming supervisor for Tanimura and Antle, Inc. requested support for funding projects for tenants and landlords. He gave the example of a demonstration project for weed and erosion control which costs about \$10,000 for a half acre. Kirk Schmidt of Quail Mountain Herbs stated that small projects are very effective in stopping a problem at the source. Elia Vasquez, a farmer in Elkhorn Slough who

has been implementing a water quality project with the Natural Resources Conservation Service, explained that because of the costs in lost revenue and lost jobs often associated with implementing conservation measures, small farmers need help to protect water quality. Dirk Giannini, a Salinas Valley grower, discussed the high costs of conservation practices and stated that help from the Regional Board would be appreciated. Rose Iniques, a farmer in Elkhorn, discussed the difficulties faced by new farmers, especially Spanish farmers, and the need for information in Spanish. She stated that help from the Board would be appreciated.

Additional testimony about the need for agricultural cost share funding was provided by agricultural technical assistance providers working in the area of Elkhorn Slough and the Salinas watershed. Bryan Largay from the Monterey County Resource Conservation District (RCD) stated that legacy pollution and current pesticides and nutrients are a severe problem in Elkhorn Slough and that it is important to control inputs. Cost-share funding can help reduce the risk to growers represented by implementing innovative practices. Emily Hanson, Executive Director of the RCD, also spoke in support of the use of funds for agricultural projects. Dr. Felicia Rein, a researcher with DD & A, said that her experience working on buffers to prevent erosion on steep slopes and reduce pollution showed that source control on farms can improve water quality. She stated that monitoring to evaluate practices is very important and will increase the effectiveness of BMPs. Daniel Mountjoy of USDA Natural Resources Conservation Service stated that source control and more awareness among growers is critical. He said that because the new Farm Bill has reduced the amount of cost share to 50%, some farmers will need additional help to implement practices. He stressed the need to look at whole systems and build partnerships.

Dr. Holly Price of Monterey Bay National Marine Sanctuary spoke about scattered sources of pollution and the need for networks of support. She said that cost share is often missing, especially for small producers, and encouraged the use of the funds as outlined in the consent judgment. Dawn Mathes, the program coordinator for the Coalition of Central Coast County Farm Bureaus, explained the role of the Farm Bureau in implementing the Sanctuary's Plan for Agriculture and said the formation of watershed working groups of agricultural producers is a key component in water quality protection by agriculture. Funds to support the groups, as provided in the consent judgment, would greatly help. Traci Roberts, a

coordinator for the Monterey and Santa Cruz County Farm Bureaus, spoke in support of using the funds for agricultural implementation. She said that grants rarely allow for direct support to farmers and funds are needed to reduce the risk of adopting new practices. Kathleen Thomasberg of Monterey County Water Resources Agency provided a copy of the 2001 nitrate survey conducted by the agency to give an idea of practices to promote. She stated that the Agricultural Water Advisory Committee supports funding of practices. Kaitilin Gaffney of the Ocean Conservancy stated that her organization will be urging the Board to require BMPs of all growers and she would also urge directing funds to BMP implementation to protect water quality.

Brett Melone of the Agriculture and Land Based Training Association (ALBA) was unable to stay for oral testimony but provided comments on his testimony card. He stated that ALBA works with limited resource farmers providing education, technical assistance and access to land, and believes that financial support is vital in encouraging widespread

adoption and implementation of practices to conserve and protect natural resources. He urged the Board to move forward on this issue.

A letter was submitted by the Salinas River Channel Coalition, requesting that funds be directed to individual agricultural growers and landowners along the Salinas River who participate in the Salinas River Channel Maintenance Program. The funds would be used to remove in-channel vegetation and sandbars and stabilize stream banks to prevent erosion of stream banks along the Salinas River and minimize flood-related impacts to the Moss Landing Harbor and Monterey Bay Sanctuary.

A letter was submitted by Louis Calcagno, Monterey County Board of Supervisors, requesting that funds be used for restoration of the Moro Cojo Slough. The letter also expressed concern about the lack of local input on allocating the settlement funds and requested that a technical contact person for the area be involved in funding decisions in the future.

28. Currently Active Timber Harvest Plans, Santa Cruz CountyOrder No. 2003-0082
 [Bill Arkfeld 805/542-4627]

Regional Board staff engineer, Bill Arkfeld, gave a presentation on the currently active timber harvest plans and responded to questions from the Board. The following parties spoke on the issue:

- Jodi Frediani/Citizens for Responsible Forest Management
- Donald W. Alley/D.W. Alley & Associates
- Robert Curry, Ph.D./CSUMB
- Elizabeth Herbert/Sierra Club
- Mike Guth/Sierra Club
- David Van Lennep/Redwood Empire Sawmills
- Gary Paul/Consulting Forester
- Kate Stafford/San Lorenzo Valley Women's Club
- Barbara Graves/Soguel Creek Task Force
- Nancy Drinkard/California Dept. of Forestry
- Dennis Hall/ California Dept. of Forestry
- Ida Hills/Aptos Resident
- Matthew T. Bissell/Matthew Bissell Forestry
- Julie Hendriks/Boulder Creek Resident
- Kaitilin Gaffney/The Ocean Conservancy
- Bob Berlage/Big Creek Lumber Company
- Kevin Collins/Lompico Watershed Conservancy

The Regional Board adopted conditional waivers for ten timber harvest plans (THPs). The Board added several conditions to each waiver. These conditions will apply to all future waivers for timber harvest sites. These conditions are in addition to the original conditions of the Waiver. The following is a summary of the conditions added by the Board.

- 1) All waived THPs must be monitored. All monitoring points should be reasonably accessible within 24 hours of a two-inch or greater storm event.

The monitoring program calls for turbidity measurements up and downstream of each road crossing, up and downstream in Class I streams at the boundaries of the plan, and temperature readings taken along the Class I stream. Inspection and monitoring records will be kept on-site and be made available to Regional Board staff on request.

- 2) Reporting is required when problems occur. "Problems" were defined as movement of one or more cubic yards of soil into a waterway regardless of the cause. This reporting must occur within 7 days of discovery of the problem.

- 3) Each year, a report will be required which summarizes the previous wet season. This will include all problems, current status of timber harvest activities, winter operations summary, maintenance/repairs proposed and completed, monitoring performed, and a summary of what will be done to prepare for the next wet season.

(Chair Daniels announced a lunch break and Closed Session meeting at 1:00 pm. The meeting reconvened at 2:10 pm.)

Regional Board staff was directed to inspect the five THPs waived that have not already been inspected. If any of these plans do not meet the conditions of the waiver, then Regional Board staff will bring the subject waiver back to the Board to be rescinded. Regional Board staff will verify that all landowners of the

waived timber harvest sites are aware of the waiver conditions.

Regional Board staff were directed to develop a template for future THP waivers which, at a minimum includes: The size of the plan; the name and class of all affected streams; the width of all Watercourse and Lake Protection Zones; a list of all sediment and erosion control Best Management Practices (BMPs); the number of stream crossings; the Threatened and Endangered status of each stream and the 303 (d) status of each stream. Staff will also develop an application form that identifies the property owner as well as the Registered Forester. Staff will also develop a decision matrix to classify the threat to water quality of each plan and the appropriate level of regulation. Finally, each waiver will indicate that the timberland owner will be responsible for the maintenance of all BMPs identified in the waiver for the life of the waiver.

MOTION: Daniel Press moved to approve Order No. 2003-0082 with the above-specified conditions 1, 2 and 3. SECONDED by Leslie Bowker. CARRIED – Unanimously (6-0)

(Chair Daniels announced a break at 3:20 pm. The meeting reconvened at 3:35 pm.)

33. Mr. William Evert, Monterey County [Wei Liu 805/542-4648] Order No. 2002-0137

Chair Daniels announced that the affected party requested that the item be rescheduled for a future Board meeting date. The Board accepted the request.

14. MTBE Sites [Jay Cano 805/549-3699] Status Report

Executive Officer Briggs noted that there was nothing to add to the written report. Mr. Bob Gresens, District Engineer for the Cambria Community Services District commented on a letter from Chevron dated April 2, 2003. Mr. Gresens noted that a conference call was held with the CSD geologist and the Chevron geologist

on September 10, 2002. He noted that all requested information was provided. Also, the CSD well No. SR4 should be considered an interim well, not a permanent well. He appreciates the time the Regional Board has spent with the CSD.

15. Perchlorate Sites [Harvey Packard 805/542-4639] Status Report

Executive Officer Briggs displayed a map submitted by the Santa Clara Valley Water District. He noted that the data has been bouncing around quite a bit, but the District is trying to delineate all contamination. Extensive meetings have been held with Olin Corporation, SCVWD, the community, the city, and the Regional Board. The Regional Board sent a letter to Olin Corp. requiring them to come up with a plan

within 10 days for an alternative water supply for the City of Morgan Hill by July 1, 2003. Some communication problems have developed so the Regional Board has been working on establishing ground rules. We are hoping that the parties will allow the technical staff handle technical issues, a separate group for the alternative water supply issues, and a third group to oversee the progress of the two technical

groups. Board member Shallcross noted that the Department of Health Services will be releasing an official maximum contamination level (mcl). Mr.

Shallcross noted the excellent work being done on this issue by John Mijares and Harvey Packard.

30. Enforcement Report [Gerhardt Hubner 805/542-4647] Status Report

Executive Officer Briggs noted that this is a written report and asked if the Board had questions. The high volume of spills was noted. Mr. Briggs explained that several of the spills are rainfall related and some resulted from power outages during storm periods.

Chair Daniels noted the large number of spills at the California Men's Colony. Mr. Briggs reminded the Board that the inmates were causing problems with the system.

31. Highlands Sanitary Association, Monterey County [Matt Thompson 805549-3159] Order No. 2003-0022

Regional Board staff engineer, Matt Thompson, presented a proposed Order to assess a Mandatory Minimum Penalty to Highlands Sanitary Association for violations of their permit to discharge treated wastewater to the Pacific Ocean at Wildcat Cove in Monterey County. Fifty "serious" and forty-five "chronic" effluent violations occurred from August 1, 2001 to September 30, 2002. Most violations were for biochemical oxygen demand (BOD) and Suspended Solids effluent limits. Mr. Thompson noted that an exception to mandatory penalties exists under California Water Code Section 13385(j) which states that mandatory penalties do not apply to violations caused by "the intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight."

Elizabeth Patrick, Charles Osborne, Ray Carrillo, Ray Coleman, and Jay Kruft of Highlands Sanitary Association alleged that former operator Edward Vaughn dismantled their wastewater treatment plant and may be liable for the mandatory penalties. Ray Coleman noted that Highlands Sanitary Association is committed to connecting to Carmel's wastewater treatment facility.

Mr. Thompson noted that power supply wires to a pump that is critical to the removal of BOD and suspended solids had been cut sometime during Mr.

Vaughn's tenure. When the pump was repaired, the facility complied with BOD and suspended solids effluent limits. Mr. Thompson recommended that if the Regional Board believes the cut wires to the pump qualify as the intentional act of a third party, that mandatory penalties only apply to six violations and the resulting penalty would be \$15,000. If the Regional Board did not believe the cut wires to the pump qualify as the intentional act of a third party, then the resulting mandatory penalty would be \$279,000.

Kaitilin Gaffney of the Ocean Conservancy and Daniel Cooper of Lawyers for Clean Water opposed staff's proposed recommendation for a penalty reduction, and the opinion that an operator could be considered a third party.

Regional Board members Russ Jeffries, Gary Shallcross, and Daniel Press suggested that Mr. Vaughn's actions were the intentional act of a third party and that a \$15,000 penalty is appropriate. Mr. Jeffries recommended evidence regarding Mr. Vaughn be referred to the local District Attorney. Mr. Young and Regional Board Chairman Bruce Daniels suggested the penalty should be directed to the Cleanup and Abatement Account and not the Carmel Sewer Connection Project.

MOTION: Jeffrey Young moved to adopt a Mandatory Penalty of \$15,000; that the penalty be directed to the Cleanup and Abatement Account; and that staff develop conforming findings. **SECONDED** by Russell Jeffries. **CARRIED - Unanimously (6-0).**

34. Morro Bay Total Maximum Daily Load and Implementation Plan For Sediment Including Chorro Creek, Los Osos Creek, and the Morro Bay Estuary as a Basin Plan Amendment
[Dominic Roques 805/542-4780]Resolution No. 2002-0051

This item was originally on the consent calendar but was removed because an interested party wished to comment on the item. Henriette Groot of Coastal Alliance on Plant Expansion read a letter that stated that the Total Maximum Daily Load and the habitat enhancement recommendations related to the Duke Power Plant rely on different estimates of bay volume, and that the TMDL should not be approved until this inconsistency is reconciled. Roger Briggs commented

that the studies were commissioned for different reasons, that the TMDL monitoring and on-going evaluation will provide for opportunities to consider different estimates of bay volume, and that the different estimates of bay volume do not change the recommendations for actions that need to be implemented.

(Vice Chair Young left the room at 5:15 pm)

MOTION: Gary Shallcross moved to approve Resolution No. 2002-0051. No second. CARRIED – Unanimously (5-0)

(Vice Chair Young returned to the room at 5:25 pm.)

39. Reports by Regional Board Members..... Status Report

There were no reports at this time.

(Vice Chair Young left the meeting at 5:30 pm)

40. Executive Officer's Report [Roger Briggs 805/549-3140] Information/Discussion

The Salinas Valley Water Project Technically Conditioned 401 Water Quality Certification conditions are outlined in the report. Roger Pasquire, resident of Pacific Grove spoke about his efforts in getting the City of Pacific Grove to upgrade it's sewer system. The problem has become a major issue in the City. He believes the efforts of the City Council and the City Manager to fix the problem are very minimal. Mr. Pasquire has written to the Regional Board asking for assistance to correct the sewer problems in Pacific Grove. He noted that the Regional Board has sent letters to the City putting them on notice. He said the City is reducing the amount of funding for sewer system improvements from \$800,000 to \$468,000. Mr. Pasquire requested that the Board take a stronger stance with the City of Pacific Grove.

Daniel Cooper, Lawyers for Clean Water, spoke on behalf of Ecological Rights Foundation. Mr. Cooper's agency acts as an enforcement agency in various locations throughout the state. Pacific Grove has a reputation among regulators and operators in the state

for aging pipes, high volume of spills, and the importance of the affected resource (Monterey Bay), and the under investment by the City. According to an EPA survey, Pacific Grove is the third worst spiller in the state. The City has made some progress as a result of Regional Board involvement. A good Fats, Oil and Grease Program is in place. They have a new rodding truck to assist in cleaning pipes, and new video equipment. The overall problem is the age of their pipes and the pipe replacement program is under-funded. Board member Press asked about further intervention by the Board. Staff Counsel, Jennifer Soloway, noted that the Board could issue a Cease and Desist Order or a Cleanup and Abatement Order. Mr. Press also asked for a copy of the EPA survey. Mr. Cooper's agency will be bringing a Federal enforcement action in Federal court within 60 days. Mr. Cooper will keep the Regional Board advised of outcomes. Board member Shallcross thanked Mr. Pasquire and Mr. Cooper for raising the Pacific Grove issue to the Board.

Chair Daniels adjourned the public meeting at 6:00 p.m.

The meeting was audio recorded and the minutes were reviewed by management, and approved by the Board at its July 11, 2003 meeting in San Luis Obispo, California.

A handwritten signature in black ink, appearing to read "Bruce ND", written over a horizontal line.

Bruce Daniels, Chair